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23353 7590 03/01/2011 RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036			EXAMINER MOSSER, ROBERT E	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/697,237  
Filing Date: October 31, 2003  
Appellant(s): NONAKA, NOBUYUKI

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Carl Schaukowitch  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 16<sup>th</sup>, 2010 appealing from the Office action mailed June 24<sup>th</sup>, 2010.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 8, 9, 11-13, 15, 16, and 18 are rejected.

Claims 1-7, 10, 14, and 17 are cancelled.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

4,573,681	OKADA	3-1986
6,507,385	NISHIYAMA et al	1-2003
6,517,433	LOOSE et al	2-2003
2005/0192090	MUIR et al	9-2005

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims **8, 9, 11-13**, and **18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Muir et al (US 2005/0192090) in view of Loose et al (US 6,517,433) further in view of Nishiyama et al (US 6,507,385).

Claims **8, 11, 12**, and **18**: Muir teaches a gaming machine including:

a display device displaying a plurality of symbols thereon (*Muir* Figure 8, Paragraph 41);

a liquid crystal shutter placed in front of the display device and selectively enabling the transparent viewing the display device based on the state of the shutter responsive to predetermined conditions (*Muir* Figure 8, Paragraph 61-65);

a liquid crystal display device placed in front of the display device and the liquid crystal shutter (*Muir* Figure 8, Paragraph 48); and

a controller for controlling the operation (*Muir* Paragraph 45) and configured to:

determine and display a symbol arrangement for display on the display device (*Muir* Paragraph 41, 52);

block the viewing of the display device through the use of the liquid crystal shutter if the determined symbol arrangement match a predetermined symbol arrangement (*Muir* Paragraph 52,65); and

display an image on the liquid crystal display device when the viewing of the display device is blocked through the use of the liquid crystal shutter (*Muir* Paragraph 62, 64, 65).

Muir teaches the invention as set forth above, however while Muir teaches the use of the Shutter mechanism to selectively display the contents of the liquid crystal display and the utilization of the LCD display based on a reel outcome, Muir arguably does not tie the use of the of the shutter mechanism to the reel outcome. In a related invention Loose teaches the use of a reel game with various randomly selected (alternatively described by appellant as la ottery) outcomes wherein based on the occurrence of a predetermined outcome a overlaid liquid crystal display is activate and in addition thereto Loose further teaches that an extendable opaque shade may be used during the bonus game to enable clear viewing of the liquid crystal display device (*Loose* Col 3:27-4:3; 4:28-57; 5:24-51). It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized the opaque shading device/shutter during a bonus game as taught by Loose in the invention of Muir in order to ensure clear viewing of the bonus game during operation.

The combination of Muir & Loose teach the invention as cited above and including as presented therein the use of liquid crystal shutter mechanisms which inhibit or permit the transmission of light based the application of an electrical signal, however the combination does not speak to the particulars of whether the liquid crystal shutter is of a type which is normally transparent when voltage is not applied alternatively described as normally white. In a related liquid crystal invention Nishiyama teaches that it is known to configure shutter type liquid crystal devices in a normally white mode (*Nishiyama* Col 14:6-17). It would have been obvious to one of ordinary skill in the art

at the time of invention to have utilized a liquid crystal shutter of a normally white type as taught by Nishiyama in the combination of Muir & Loose in order to conserve power while the shutter was not in use.

**Claims 9 and 13:** The combination of Muir, Loose & Nishiyama teaches the utilization of the shutter mechanism during the establishment of a special prize (bonus game) and during the non-establishment of a special prize (*Muir* paragraphs 12, 51, 63-65; *Loose* Col 4:28-40, 4:58-5:23, 5:31-51 ).

Claims **15-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Muir et al (US 2005/0192090) in view of Loose et al (US 6,517,433) further in view of Nishiyama et al (US 6,507,385) as applied to claims **8, 9,11-13**, and **18** above and further in view of Okada (US 4,573,681)

The combination of Muir, Loose & Nishiyama teach the invention as cited above including the incorporation a reel display device and shutter device capable of selectively blocking the images of the reels. The combination of Muir, Loose & Nishiyama however is arguably silent regarding the time based sequential modification of the display device. In a related application Okada teaches the time based sequential modification of the display device (*Okada* Col 2:32-48). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the time based sequential modification of the display device of Okada in the combination Muir,

Loose & Nishiyama in order to extend the players anticipation of a game result by lengthening the period time wherein the game result is revealed.

**(10) Response to Argument**

**I. Claims 8, 9,11-13, and 18 are rejected under 35 USC 103(a) as being unpatentable over Muir et al. (U.S. patent Application Publication No. 2005/0192090) in view of Loose et al (U.S. Patent No. 6,517,433) and further in view of Nishiyama et al. (U.S. Patent No. 6,507,385)** (Appellant's Brief pages 9-13)

The appellant's remarks of this section commence on pages 8 through 11 with a brief characterization of the prior art references applied in the rejection of record and the presentation of rejected claims 8. Beyond the general traversal of the rejection, no specific arguments against the rejection of record are raise until page 11.

In the first full paragraph of page 11 the appellant challenges the rejection of claim 8 based on the combination of Muir, Loose, and Nishiyama under allegation that the combination fails to teach or suggest that the liquid crystal shutter display device is made up of a normally white liquid crystal panel for maintaining a transparent state with a voltage not being applied and the controller controls the display shielding unit of the liquid crystal shutter display device so as to change over from the transparent state to the shielding state, by applying the voltage when process (b) is performed. The appellant's holding, is that one of ordinary skill in the art could not combine the features of the applied art to arrive at the claimed invention because the applied art is devoid of



all the features of the claimed invention and as such claim 8 is allegedly allowable over the applied art.

The appellant's challenge is addressed by the rejection of record wherein the operation and use of a liquid crystal display shutter to change from a transparent state to a shielded state and vice versa is based on an applied voltage as provided by a game controller responsive to the symbols appearing on the game symbol display as provided for by the prior art combination of Muir & Loose. While the liquid crystal display type shutter of Muir & Loose is silent regarding if the particular type of liquid crystal display shutter is of a type normally black type liquid crystal display (wherein the liquid crystal display shutter blocks the transmission of light in the absence of voltage) or if alternatively the liquid crystal display is of a normally white type (which permits the transmission of light in absence of voltage) the prior art of Nishiyama teaches that both of these alternative forms of liquid crystal display technologies were recognized and known at the time of invention. The rejection of record according, as presented herein above, holds that it would have been known to utilize a known particular type of liquid crystal display for the liquid crystal display shutter of the combination of Muir & Loose in view of teachings of Nishiyama. The appellant's arguments proposing that the above limitations are not presented within the rejection of record are simply not reflective of rejections of record and therefore rejection of claims should be maintained.

In the paragraph bridging pages 12 and 13 of the appellant's brief the Appellant raises the same challenge against the rejection of claim 11 as was previously raised and redressed above with regards to the rejection of claim 8. For the sake of brevity the

response to the appellant's challenge of the rejection of claim 8 as presented above, is incorporated herein to address the appellant's challenge of the rejection of claim 11. The appellant's arguments proposing that the claim limitations are not presented within the rejection of record are simply not reflective of the rejections of record and therefore rejection of claims should be maintained.

In the last full paragraph of page 13 of the appellant's brief the Appellant raises the same challenge against the rejection of claim 18 as was previously raised and redressed above with regards to the rejection of claim 8. For the sake of brevity the response to the appellant's challenge of the rejection of claim 8 as presented above, is incorporated herein to address the appellant's challenge of the rejection of claim 18. The appellant's arguments proposing that the claim limitations are not presented within the rejection of record are simply not reflective of the rejections of record and therefore rejection of claims should be maintained.

#### **I-A. Results and Advantageous Effects of the Present Invention**

(Appellant's Brief Pages 13-16)

Commencing the appellant remarks of this section on page 14, the appellant presents that the office must consider various advantages of the claimed invention as evidence of non-obviousness. In further explanation of this proposed advantage the appellant continues on page 14 to argue that the operation of the normally white liquid crystal shutter would lend non-obviousness to the claimed rejection for operating in a conventional manor in a gaming environment. The appellant includes a table

demonstrating the operating modes of a liquid crystal shutter based on whether the liquid crystal shutter is a of a normally white or normally black type.

It is first noted that this proposed evidence of non-obviousness such as would be typical of an affidavit under 37 CFR 1.132, yet no such affidavit has been presented nor made of record at the time that appellant's brief was filed. Further the submission of an affidavit or declaration under 37 CFR 1.132 would not be considered timely after the filing of the appeal brief by the appellant without the submission of an RCE (MPEP 716.01). There are provisions for the submission of evidence of non-obviousness by the appellant that have not been met by the appellant in this case and according the appellant's remarks of this section should fail at least for not being timely presented.

Second, the evidence for non-obviousness as presented by the appellant is opinion and not objective evidence fairly support by actual proof. The appellant's remarks of this section would substitute appellant's opinion in place of evidence when it has been established that attorney arguments and opinions alone cannot take the place of evidence (MPEP 716.01.(c)). In the absence of factual evidence to establish the alleged non-obviousness of the rejection, the appellant's remarks of this section should additionally fail for failing to provide evidence of non-obviousness.

Third, the appellant's brief pages 14 through 15, describes the operation of a normally white and a normally black type liquid crystal display in apparent attempt to establish a functional difference between operational modes. The operation modes and alternative use of normally white and normally black liquid crystal devices however has already been established by the prior art of record in Nishiyama at Column 14:12-17.

Appellant's attempt to distinguish the operational mode of a normally white liquid crystal device does not address the rejection of record and specifically does not provide a separation between the claimed normally white liquid crystal device and the combination of prior art that recognizes the use of a normally white liquid crystal device.

Continuing in the third full paragraph of page 14, the appellant argues that the incorporation of a normally white liquid crystal device would provide for various unclaimed benefits to a gaming machine. Such benefits as presented by the appellant and resultant of various hypothetical conditions do not address the rejection of record and at best establish alternative motivation to utilize the known normally white liquid crystal display type in the rejection of record. The appellant's arguments fail to establish how the incorporation of a known type of liquid crystal device in a known shutter arrangement would render the claimed invention non-obvious. Further the appellant's argument that in the case of a power loss the normally black liquid crystal display would prohibit the viewing of the game reels and therewith prohibit the play of the game is at best puzzling, since the loss of power to a gaming machine regardless of the liquid crystal display type would prohibit the use of both the electronic gaming machine and any realization of the claimed invention that relies upon a liquid crystal display device to selectively present game elements to a player.

For the reasons as set forth above the appellant's proposition that the claimed invention would be non-obvious over the combination of prior art based on appellant alleged evidence of non-obviousness should be found non-persuasive.

**II. Claims 15 and 16 are rejected under 35 USC 103(a) as being unpatentable over Muir in view of Loose in view of Nishiyama as applied to claims 8, 9, 11-13 and 18 and further in view of Okada (U.S. Patent No. 4,573,681)** (Appellant's Brief pages 16-18)

Commencing on pages 16 and 17 of the appellant's brief the appellant provides a general characterization of the prior art of Okada and provides a listing of pending claim 15. Following the above in the paragraph bridging pages 17 and 18, the Appellant raises the same challenge against the rejection of claim 15 as was previously raised and redressed above with regards to the rejection of claim 8. For the sake of brevity the response to the appellant's challenge of the rejection of claim 8 as presented above, is incorporated herein to address the appellant's challenge of the rejection of claim 15. The appellant's arguments proposing that the claim limitations are not presented within the rejection of record are simply not reflective of the rejections of record and therefore rejection of claims should be maintained.

### **III. Conclusion**

The Appellant's arguments directed to the non-obviousness of the claimed invention based on allegations of absent claimed features in the prior art and additional allegations of a non-obvious advantage are not fairly supported and therefore not fairly established. Similarly the Appellant's further arguments directed to additional claims based on claim arguments redressed above cannot be reasonably sustained based inherency of non-obvious subject matter where no non-obvious subject matter has been

established. Following from the above, it is respectfully submitted that the rejection of claims as presented in the final office action dated May 24<sup>th</sup>, 2010 should be upheld.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Robert Mosser/

Patent Examiner

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